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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,726	06/30/2006	Mark C. Poznansky	62063(51588)	1191

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EXAMINER

ROOKE, AGNES BEATA

ART UNIT	PAPER NUMBER
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1656

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10/10/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/563,726	Applicant(s) POZNANSKY ET AL.	
	Examiner AGNES B. ROOKE	Art Unit 1656	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 29-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 is/are allowed.
- 6) ☒ Claim(s) 29-33, 36, 38 and 42-44 is/are rejected.
- 7) ☒ Claim(s) 34, 35, 37 and 39-41 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The Finality of the previous office action is withdrawn in view of the new rejection.

Claims Disposition

Claims 1 and 29-44 are pending and under consideration. Claims 2-28 are cancelled.

Allowable Subject matter

Claim 1 is allowable because Applicants amended the claim to refer to the pharmaceutical composition comprising an isolated heat shock protein (HSP) fragment consisting of SEQ ID NO:47 in an effective amount to promote fugetactic activity and a pharmaceutically acceptable carrier, where the SEQ ID NO:47 is novel.

New Rejection

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 29-33, 36, 38, and 42-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Srivastava, WO 200152791 as evidenced by Srivastava U.S. 5,759,119.

Srivastava '791 teaches pharmaceutical compositions comprising peptide-binding fragments of heat shock proteins (HSPs) and non-covalent complexes of peptide-binding fragments of HSPs in noncovalent association with antigenic molecules

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and methods of use of such pharmaceutical compositions as immunotherapeutic agents for the treatment and prevention of infectious diseases. See Abstract. (instant claims 29, 30, 31, 33, 36, 39 where SEQ ID NO:3 is hsp90 protein and is used in methods as immunotherapeutic agent, for example).

Specifically in claim 50, on page 80, and the sequence listing on pages 10-12 of the specification, Srivastava '791 teaches SEQ ID NO:5 (732 amino acids long polypeptide), that has 100% identity to the instant SEQ ID NO:3. (see instant claim 29).

Although, the reference does not teach the fugetactic activity per se, it would be the inherent property of SEQ ID NO:5 (an HSP90 protein) to promote fugetactic activity because the SEQ ID NO:5 is identical to the instant SEQ ID NO:3.

Thus, if the amino structure of a peptide is identical, then the function must also be the same. Therefore, finding of a new function of the well known polypeptide, here HSP90 protein as being able to promote fugetaxis of migratory cells, is non-patentable by itself.

In addition, in instant claim 29, the SEQ ID NO:47 is referred in the alternative only.

Claim 15 and Abstract of Srivastava '791 teaches a method of preparing a heat shock protein binding fragment non-covalently associated with a peptide that is an antigenic molecule. (instant claims 30-31 that refer to HSP 90 SEQ ID NO:3 that is co-administered with a therapeutic agent that is anti-inflammatory agent; and claim 33 where it is administered inadvertently to a tissue).

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Claims 25-28 of Srivastava '791 teach a method of eliciting an immune response against an antigen in an individual by administering an immunogenic complex of a heat shock protein peptide-binding fragment that is non-covalently associated with a first antigenic molecule. (instant claims 29, 36, and 38 where autoimmune reaction is an allergic reaction).

Srivastava '119 teaches that HSP90 stimulates the immune response against a tumor. See column 4, lines 19 and 22-25; and where the immune response is affected by means of T cell cascade. See column 4, lines 33-36 (instant claim 32 where immune response manifests itself as an inflammation; and claims 42-44 where the cells affected by immune response are T cells).

Objections to Claims

Claims 34, 35, 37, 39, 40, and 41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Agnes Rooke whose telephone number is 571-272-2055. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathleen Kerr Bragdon can be reached on 571-272-0931. The fax phone

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number for the organization where this application or proceeding is assigned is 571-272-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197.

AR

/Karen Cochrane Carlson, Ph.D./

Primary Examiner, Art Unit 1656